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CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 26th September, 2024

No. 13/2/150-HII(2)-2024/14982.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **44/2022** dated **02.08.2024** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

SANJEEV KUMAR S/O SH. DHARAM SINGH, H. NO. 53, PHASE - 1, RAMDARBAR, CHANDIGARH. (Workman)

AND

M/S T.C. STEEL INDUSTRIES, PLOT NO. 11, PHASE - 2, RAM DARBAR, CHANDIGARH THROUGH ITS PARTNERS/PROP. (Management)

AWARD

1. Sanjeev Kumar, workman has presented industrial dispute under Section 2A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that the workman was appointed as Fitter by the management during March, 1999 on monthly wages of ₹ 4,500/- per month. During the year 1999, there had been 23 workers in the management-industry but later on the management reduced the strength of the workers. On 14.08.2020 the management illegally terminated the services of the workman without issuing any charge sheet, notice, inquiry or paying any service compensation or disclosing any cause or reason of termination to the workman. The management has not paid earned wages and other dues of the workman to which he was legally entitled to receive from the management-employer. The last wages drawn by the workman at the time of termination of his services, was ₹ 22,000/- per month. But on papers it was shown ₹ 11,000/- per month by the management. The scheme of ESI was applicable to the workman so ESI identity

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card was issued to him. After termination of the services of the workman, the junior workers were retained in service and fresh hands were appointed / recruited in the place of workman. The post / job against which the workman was appointed, was of perennial nature and said post has not been abolished so far by the management. During his entire service period, the work & conduct of the workman remained satisfactory to his superiors and there is nothing adverse against him. The workman has worked for more than 240 days of service with the management within 12 months preceding termination of his services. The workman is un-employed since the date of termination of his service despite his best efforts to search the job. The workman is legally and lawfully entitled to be reinstated in service with continuity of the service and full back wages of the intervening period. Prayer is made that the workman may be reinstated with continuity of service along with full back-wages or any other similar relief which the Tribunal deem fit under the circumstances of the case.

3. On notice, management contested the claim statement by filing written statement dated Nil filed on 12.01.2023 wherein preliminary objections are raised on the ground that statement of claim is not maintainable. The present action is a gross abuse of the process of law. Since the claimant (*here-in-after 'workman'*) is guilty. The workman has concealed the material facts from the Court. The workman has no locus standi and cause of action. The workman is barred by his own act & conduct from serving the alleged notice upon the management. The claim statement is abuse to the process of law and not maintainable. The statement of claim is ill-conceived, mis-conceived and un-tenable, thus liable to be dismissed. The workman has filed the present claim with ulterior motive to extort money from the management. The workman himself started remaining absent from duty since 11.08.2020 without intimating the management. The Co-worker was sent to his house but the neighbour informed that Shri Sanjeev Kumar has left for his house at Himachal Pradesh. Letters were sent to his local address for joining duty but he did not join his duty. He was asked to join his duty before the Assistant Labour Commissioner, U.T. Chandigarh but he did not join his duty for the reasons best known to him. The management is still ready to take him back on duty afresh with immediate effect.

4. Further in para-wise reply it is denied as wrong that the workman was appointed as Fitter by the management during March 1999 on monthly wages of ₹ 4,500/- per month. It is stated that the workman should be put to strict proof about his contention that he was appointed by the management during March, 1999. It is denied as wrong that during the year 1999, there had been 23 workers in the management-industry and later on the strength of workers are reduced. It is stated that the firm of the answering management is registered under the Shop & Commercial Act. There were never 23 workers employed by the management. The workman should be put to strict proof about the contention that 23 workers were employed by the management. It is further stated that the work was never refused to the workman. The workman himself started remaining absent from duty since 11.08.2020 without intimating the management. The Co-worker was sent to his house but the neighbour informed that Shri Sanjeev Kumar has left for his house at Himachal Pradesh. Letters were sent to his local address for joining duty but he did not join his duty. He was asked to join his duty before the Assistant Labour Commissioner, U.T. Chandigarh but he did not join his duty for the reasons best known to him. The management is still ready to take him back on duty afresh. The workman was drawing ₹ 11,500/- when he started remaining absent. It is admitted as correct that workman was registered under the ESI scheme. Due to heavy losses the management has no work. The work & conduct of the workman was not up to mark. The workman was warned many times to mend himself but he did not improve his behaviour. The workman has not worked continuously for 240 days preceding 12 months. The workman is gainfully employed and not entitled to any relief claimed by him. Rest of the averments of claim statement are denied as wrong and prayer is made that the claim statement may be dismissed with heavy cost.

5. The workman filed rejoinder wherein the contents of the written statement are denied as wrong and averments of claim statement are reiterated.

6. From the pleadings of the parties following issues are framed vide order dated 06.02.2023 :-

1. Whether the termination of the workman is illegal ? OPW
2. If issue No.1 is proved in affirmative, whether the workman is entitled to reinstatement with continuity of service, full back wages and all other consequential benefits, as prayed for ? OPW
3. Whether the workman has not approached the Court with clean hands ? OPM
4. Whether the claim application is false, frivolous to the knowledge of the workman ? OPM
5. Relief.

7. In evidence workman Sanjeev Kumar examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A'. On 01.04.2024 the workman closed his evidence in affirmative.

8. On the other hand, management examined MW1 Tasleem Chand - Proprietor of M/s TC Steel Industries, who tendered his affidavit Exhibit 'MW1/A' along with copies of documents Exhibit 'M1' to Exhibit 'M6'.

Exhibit 'M1' is copy of adhaar card of Tasleem Chand

Exhibit 'M2' is copy of register of employees for the month of April, 2001 of employees namely Jagdesh Ram, Sanjeev Kumar, Ranjeet Kumar, Shiv Bhadur, Harinder, Bhadur, Dilbagh Singh (colly page 1 to 7)

Exhibit 'M3' is copy of receipt of salary of the Sanjeev Kumar for the month of April, 2001 (page 2 of Exhibit 'M2')

Exhibit 'M4' is copy of register of employee Sanjeev for the month of November, 2018; December, 2018; January, 2019; May, 2019; Sanjeev Kumar for the month of December, 2019; Sanjeev Kumar for the month of March 2020.

Exhibit 'M5' is copy of receipt of salary of Sanjiv Kumar for the month of July, 2020.

Exhibit 'M6' is copy of register of employee Sanjiv Kumar for the month of August, 2020.

9. On 30.07.2024, Tasleem Chand - Proprietor closed evidence of management.

10. I have heard the arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise findings are as below :-

Issues No. 1 & 2 :

11. Both these issues are taken up together being interconnected and in order to avoid repetition of discussion.

12. Onus to prove both these issues is on the workman.

13. Under these issues Learned representative for the workman referred the testimony of AW1 Sanjeev Kumar - workman, who vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto, which are not reproduced here for the sake of brevity.

14. On the other hand, Learned Representative for management referred the testimony of MW1 Tasleem Chand, who vide his affidavit Exhibit 'MW1/A' deposed that he is running the factory under the name & style M/s TC Steel Industries and is Proprietor of the same. Copy of his aadhar card is Exhibit 'M1'. The workman Sanjeev Kumar was working in their factory as worker since April, 2001 and his salary was ₹ 2,200/- and there were 7 workers in their factory in the year 2001. The photocopy of attendance register is Exhibit 'M2' and receipt of salary of the workman is Exhibit 'M3'. The workman was habitual to absent from his work without giving any information to him as well as other co-workers about his absence. During his service tenure the workman was absented from his work which is as under :-

1. 55 days (27th November, 2018 to 20th January, 2019)
2. 10 days (4th May, 2019 to 14th May, 2019)
3. 10 days (1st December 2019 to 11th December, 2019)
4. 12 days (7th March, 2020 to 20th March)
5. Continuing absent since 11th August, 2020

The attendance register is Exhibit 'M4' (colly). MW1 further deposed that workman left his job on 11th August, 2020 and he has not returned on his duty since 11.08.2020 intentionally and willfully. Neither he informed about his absence nor he gave any letter to the management. The workman had given a demand notice to the management after expiry of eight months. When the workman has left his job, he was getting salary ₹ 11,500/-. The receipt of salary is Exhibit 'M5'. The attendance register is Exhibit 'M6', which clearly shows that the workman was continuously absent from his job as he has left his job on his own. The workman was never terminated by the management as alleged by the workman in his claim. The management has also given statement to join the workman before the Assistant Labour Commissioner, Chandigarh but he refused to join the work. The workman is telling lie that he was working as Fitter for the March, 1999 and was getting ₹ 4,500/-. As per record, he has not paid such amount to the workman and there was not post of Fitter in their factory. His salary was ₹ 2,200/- per month as per Exhibit 'M2'. On 11.08.2020 the workman never came in their factory and he never gave any notice regarding his absence. The workman is settled in his work of agriculture at his native village. The workman has filed the present case just to harass them and just to grab his money as he has taken a loan of ₹ 18,000/- from him in the year 2005 for his personal use. The management is willing and ready to take back the workman on his job. The present case may be dismissed in the interest of justice.

15. From the oral as well as documentary evidence led by the parties it comes out that the management has not disputed the employment of the workman in the management factory running under the name & style of M/s TC Steel Industries. The management has disputed the date of appointment of the workman and the post on which the workman was appointed and the amount of monthly wages paid to the workman. The workman has alleged that he was appointed as Fitter in the month of March, 1999 on monthly wages of ₹ 4,500/-. On the other hand, the management has taken the plea that the workman was working in their factory as worker since April, 2001 and his salary was ₹ 2,200/-. The actual date of appointment, the post on which the workman was appointed and initial salary paid to the workman on his appointment, can be ascertained from the appointment letter, which contains the date of appointment as well as the terms & conditions of service. The amount of salary can also be ascertained from the wage slips. It is mandatory for the employer to maintain the service record of its workers - employees. In the present case, the management has not placed on record the appointment letter issued to the workman or the wage slip. In this regard, MW1 Proprietor of the management factory when put to cross-examination stated that they do not issue appointment letters and wage slips to the workers. MW1 stated that he is running factory since 1995. MW1 further stated that they do not

have attendance record of the employees prior to year 2001. The aforesaid of MW1 would show that the management factory has not deliberately issued appointment letter and wage slips to the workman and also did not produce the attendance record of its employees prior to year 2001 to conceal the actual state of affairs from the Court so that the actual date of appointment and the actual amount of monthly wages paid to the workman may not come on record. Due to non-production of the service record prior to year 2001, adverse inference is drawn against the management. As far as last drawn wages of the workman are concerned, it is own suggestion of the workman put to MW1 in his cross-examination that last drawn wages of the workman were ₹ 11,500/-. In this regard, MW1 in his cross-examination admitted as correct that the workman Sanjeev Kumar was initially appointed on wages of ₹ 2,200/- and last drawn wages of workman Sanjeev Kumar were ₹ 11,500/- per month. In this manner, it is duly established on record that the workman was appointed as Fitter in the management- factory in March, 1999 and the workman remained in the employment of the management up to 14.08.2020 and last drawn monthly wages of the workman were ₹ 11,500/-.

16. Learned Representative for the workman argued that the workman remained in continuous employment of the management from March, 1999 up to 14.08.2020 then the services of the workman were verbally terminated by the management by refusal of work without assigning any reason. On the other hand, Learned Representative for the management argued that the services of the workman were never terminated. In fact, the workman abandoned the service by not reporting on duty and remaining continuously absent w.e.f. 11.08.2020 without any intimation and without applying leave. It is further argued by Learned Representative for the management that the workman was habitual of remaining absent. To support his argument Learned Representative for the management referred Exhibit 'MW1/A' wherein MW1 deposed that during his service tenure the workman was absented from his work which is as under :-

1. 55 days (27th November, 2018 to 20th January, 2019)
2. 10 days (4th May, 2019 to 14th May, 2019)
3. 10 days (1st December 2019 to 11th December, 2019)
4. 12 days (7th March, 2020 to 20th March)
5. Continuing absent since 11th August, 2020

17. To my opinion, the argument advanced by Learned Representative for the management that the workman was habitual of remaining absent and the version of MW1 wherein he detailed the period of absence is devoid of merits because the period of absence, as detailed by MW1 in his affidavit Exhibit 'MW1/A', has not been put in cross-examination to workman / AW1. Furthermore, the management in the written statement has pleaded that *"the claimant himself started absent from duty since 11-8-2020 without intimating the management. The co-worker was sent to his house but the neighbor informs that Sh. Sanjeev Kumar has left for his house at Himachal Pradesh. Letters were sent to his local address for joining duty but he did not join his duty. He was asked to join his duty before the Asstt. Labour Commissioner U.T. Chandigarh but he did not join his duty, the reasons best known to him"*. The aforesaid plea taken by the management in the written statement does not stand proved because the management has neither named nor examined any co-worker, who was allegedly sent to the house of the workman to communicate him to rejoin his duty. The management has neither named nor examined the neighbour, who allegedly informed that the workman has left to his native village at Himachal Pradesh. The management did not bring on record any letter allegedly sent to the workman on his local address for joining duty. MW1 in his cross-examination stated that the management did not keep the record of residential address of the workers. In view of the aforesaid version of MW1, it is not at all trustworthy that the management has sent any letters on the local address of the workman requiring him to join duty. The period of absence

mentioned by MW1 is without any basis as MW1 in his cross-examination stated that the management did not maintain leave record of the workers. MW1 in his cross-examination categorically stated that they have not issued any letter to Sanjeev Kumar for reporting on duty after 13.08.2020. Above all MW1 has introduced a new plea in his examination in chief by stating that the workman has obtained a loan of ₹ 18,000/- from him in the year 2005 for his persona use. The aforesaid version of MW1 does not stand proved as no loan document is brought on record by him. Moreover, no such fact of obtaining loan has been put to the workman / AW1 in his cross-examination providing him an opportunity to admit or deny the same. The plea taken by the management that the management is ready to take back the workman on duty afresh would led to the inference that the management is not ready to give the benefit of continuity of service and back wages to the workman. Moreover, the management's plea to take the workman back on duty afresh stands falsified from the contradictory plea taken by the management in para 6 of para-wise reply in written statement wherein it is stated that due to heavy losses the management has no work and this fact supports the plea of the workman that he was verbally refused work on 14.08.2020 without assigning any reason when he went to attend his normal duty. From the discussion made above, it is duly established that the workman remained in continuous service of the management for more than 240 days in 12 calendar months preceding the date of termination of his services (services being terminated w.e.f. 14.08.2020).

18. Once it is proved that the workman has completed 240 days of continuous service in 12 calendar months preceding termination as required under Section 25B of the ID Act, the provisions of Section 25F of the ID Act is attracted, which lays down conditions that an employer must comply on the retrenchment of a workman. For better appreciation Section 25F of the ID Act is reproduced as below :-

"25F. Conditions precedent to retrenchment of workmen. - No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;*
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and*
- (c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette]."*

19. The argument of the management that workman has abandoned the services cannot be accepted for the reasons that as and when the workman absented from duty, it was bounded duty of the management to issue notice asking him to report for duty and to take necessary disciplinary action. When an employee absents from duty un-authorisedly he, at the most commits misconduct. A domestic inquiry is, therefore required to be initiated. The order of termination of service is not a substitute for an order of punishment. If an employee is to be dismissed from service on the ground that he had committed misconduct, he is entitled to an opportunity of hearing. Had such an opportunity of hearing been given to him the workman could have shown that there were compelling reasons for his not reporting on duty. In the present case, MW1 when put to cross-examination stated that no notice and charge sheet was issued to the workman and no inquiry was held against the workman. MW1 in his cross-examination further admitted as correct that the workman had not issued any notice or charge sheet with regard to absence period as mentioned in para 3 of affidavit Exhibit 'MW1/A'. Consequently, it is proved that the workman had not abandoned the service and his services were

terminated, thus the rigor of Section 25F of the ID Act would come into play. In this case, the management before terminating the services of the workman did not comply with the mandatory conditions laid down in Section 25F of the ID Act, therefore, order of termination of the workman is illegal and hereby set aside. The management has failed to prove the plea of gainful employment of the workman. No suggestion is put to the workman in this regard. On the other hand, the workman has pleaded that from the date of termination till date he is unemployed despite his best efforts to search the job. AW1 has denied the suggestion as wrong that he left the job as he has to do his agriculture as there was no family to look after the same. AW1 denied the suggestion as wrong that he was working as daily wager on fixed amount of ₹ 11,500/-. The workman is entitled to reinstatement with continuity of service and 75% back wages.

20. Accordingly, this issue is decided in favour of the workman and against the management.

Issues No. 3 & 4 :

21. Both these issues are taken up together being interconnected and in order to avoid repetition of discussion.

22. Onus to prove both these issues is on the management.

23. The management has failed to prove as to how the workman has approached this Court with unclean hands. The management has also failed to prove the concealment of any material fact by the workman. On being aggrieved from the verbal termination of services by the management, the workman was left with no other option then to raise an industrial dispute and on failure of conciliation proceedings to approach this Court by filing a claim statement in view of the failure report bearing Memo No.2269 dated 18.10.2021 of Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh. Thus, the workman has filed the present claim statement with valid cause of action and locus standi. The objection raised by the management that the claim statement is false and frivolous carries no force and is not sustainable.

24. Accordingly, both these issues are decided against the management and in favour of the workman.

Relief :

25. In the view of foregoing finding on the issues above, this industrial dispute is allowed. The workman is held entitled to reinstatement with continuity of service and 75% back wages. The management is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which the management shall be liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this award till its actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.) . . . ,

(JAGDEEP KAUR VIRK),
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

Dated : 02.08.2024.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 26th September, 2024

No. 13/2/151-HII(2)-2024/14984.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **44/2021** dated **01.08.2024** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

RAVI KUMAR S/O SH. RAMJI R/O HOUSE NO. 276, VILLAGE DADUMAJRA,
CHANDIGARH - 160014 (Workman)

AND

1. IKYA HUMAN CAPITAL SOLUTIONS (DIVISION OF QUESS CORP. LTD.) THROUGH ITS OWNER/ DIRECTORS/PROPRIETORS/MANAGER SCO NO.165-166, FIRST FLOOR, SECTOR 8-C, CHANDIGARH - 160009.
2. INDO NISSIN FOODS PVT. LTD. THROUGH ITS OWNER/DIRECTORS PROPRIETORS / MANGER, 3RD FLOOR, CENTENARY BUILDING, 28, M.G. ROAD, BANGALORE (INDIA) - 560001. (Management)

AWARD

1. Ravi Kumar, workman has presented industrial dispute under Section 2A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that the respondent No.1 (*here-in-after 'management No.1'*) is a company / establishment and deals in services for its clients i.e. respondent No.2 (*here-in-after 'management No.2'*). The management No.2 is a company / establishment and deal in sales and manufacturing of FMCG. The applicant (*here-in-after 'workman'*) was appointed by management No.1 and was deployed as Sales Representative on 07.11.2017 at Chandigarh location with management No.2. Nature of work of the workman was permanent, to collect the orders (products of management No.1) from the shops. Hence, the workman is a 'workman' defined under Section 2(s) of the ID Act. The work of the workman was controlled, supervised and assessed by Shri Kishore Kumar - Area Sales Manager of management No.2. The personal file, record of leaves etc. of the workman was maintained by Human Resource Department of both the managements. The workman was being paid salary Rs.12,520/- after deduction of Provident Fund (PF) and Employees' State Insurance (ESI). While in service, the work & conduct of the workman was unblemished and satisfactory. No charge-sheet was served to him. On 20.03.2019 the workman was told by Shri Kishore Kumar - Area Sales Manager of management No.2 that the services of the workman are no more required by the company. The workman may not require to come to work anymore. Hence, the managements illegally arbitrarily and malafidely terminated the services of workman all of a sudden without following the mandatory procedure laid down under the provisions of the ID Act. The work on which the workman was deputed is still going on being regular work of the managements. While terminating the services of the workman in the manner mentioned above, the managements have utterly violated the various provisions of the ID Act. Neither prior notice was issued to the workman nor he was paid wages in lieu of the notice period. The managements have not paid to workman monthly dues for March, 2019, full & final including paid leaves,

leave encashment, bonus of last financial year. The workman has completed 240 days in 12 calendar months preceding his termination. Previously workman submitted demand notice to the managements and before the Assistant Labour Commissioner-cum-Conciliation Officer, Labour Department, Sector 30, Chandigarh. The Conciliation Officer initiated conciliation proceedings which failed and accordingly to Conciliation Officer vide Memo No.936 dated 26.02.2020 advised the workman to refer Section 2A of the Industrial Disputes (Amendment) Act, 2010 and accordingly this claim. Prayer is made that managements may be ordered to clear the pending wages and bonus of the workman with immediate effect and to reinstate the workman with continuity of service and full back wages along with all the consequential benefits.

3. On notice management No.1 appeared through its Representative Shri Brighu Agnihotri on 01.07.2021. Learned Representative Shri Brighu Agnihotri filed authority letter on behalf of management No.1 on 05.08.2021. The authority letter dated 05.08.2021 in favour of Representative Shri Brighu Agnihotri has been issued by authorised signatory of Quess Corp. Ltd. Management No.1 contested the claim statement by filing written statement dated 05.07.2022 (filed on 06.07.2022) mentioning therein that the written statement is on behalf of management No.1 namely Quess Corp. Ltd. formerly IKYA Human Capital Solutions Limited. In the written statement preliminary objections are raised on the ground that the claim statement is false and frivolous as the answering management had not terminated the services of the claimant (*here-in-after 'workman'*) at any point of time. It was the workman himself who abandoned on his own w.e.f. 09.03.2019 without any intimation and thereafter left the job of the answering respondent (*here-in-after 'answering management'*) at his own volition. As such, the claim statement is liable to be dismissed against the answering management. The workman has not approached the Authority with clean hands and has concealed the material facts from this Authority. The workman has concealed that he was engaged by the answering management on fixed term employment contract w.e.f. 07.11.2017 to 06.11.2018 vide letter dated 06.11.2017. The workman has also concealed the fact that he being a habitual offender had turned up for work in a drunken state / under the influence of alcohol on 09.03.2019. When Shri Kishor Kumar - Area Sales Manager of the client of the answering management i.e. management No.2, who was his reporting Manager confronted him and asked him to submit a written explanation for his misconduct and tender apology in writing, the workman for the reasons best known to him left to report for duty at his own and did not turn up for work. The workman further concealed that he himself asked the answering management to process his full & final and when the answering management prepared his cheque for his full & final dues, he did not turn up to collect the same and raised a frivolous demand against the answering management which is totally false, baseless and untenable in the eyes of law. The claim filed by the workman against the answering management alleging illegal termination of his services is liable to be rejected being false, frivolous and vexatious.

4. Further on merits, it is stated that it is a matter of record that management No.1 is a company / establishment and deals in HR services for its clients i.e. management No.2. It is also replied being matter of record that management No.2 is a company / establishment and deals in sales and manufacturing of FMCG. It is also replied being matter of record that the workman was appointed as Sales Representative on 07.11.2017 by the management No.1 and was deputed to work with management No.2. It is replied being matter of record that the nature of the work of the workman was permanent to collect the orders from the shops and hence the workman is a 'workman' as defined under Section 2(s) of the ID Act. It is further replied being matter of record that the workman was being paid Rs.12,520/- as salary after deduction of PF and ESI. It is further stated that the workman was engaged by the answering management on fixed term employment contract w.e.f. 07.11.2017 to 06.11.2018 vide offer letter dated 06.11.2017, as per the terms & conditions of his employment mentioned therein and was deputed at the site management No.2. Further similar stand is taken as taken in the primarily objections. Rest of the averments of claim statement are denied as wrong except para No.7 which is replied in a formal manner that it needs no reply and prayer is made that the claim statement may be dismissed.

5. Notice issued to management No.2 under registered cover vide postal receipt dated 05.10.2021 was not received back undelivered although mandatory period of 30 days had elapsed from the date of issuance of notice, hence deemed service of management No.2 was affected. None appeared on behalf of management No.2. Thus, vide order dated 15.12.2021 the management No.2 was proceeded against ex-parte.

6. The workman filed rejoinder on 03.10.2022 wherein the contents of the written statement except admitted facts are denied as wrong and averments of claim statement are reiterated.

7. From the pleadings of the parties, following issues were framed vide order dated 03.10.2022 :-

1. Whether the termination of the workman is illegal ? OPW
2. If issue No.1 is proved in affirmative, whether the workman is entitled to reinstatement with continuity of service, full back wages and all other consequential benefits, as prayed for ? OPW
3. Whether claim statement is false and frivolous ? OPM
4. Whether workman has not approached this Court with clean hands and concealed the material facts ? OPM
5. Relief.

8. In evidence workman Ravi Kumar examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A'. On 02.04.2024 Learned Representative for workman closed evidence in affirmative on behalf of the workman.

9. On the other hand, management No.1 examined MW1 Darshan Singh - Authorised Representative of IKYA Human Capital Solutions (Division of Qness Corp. Ltd.), who tendered his affidavit Exhibit 'MW1/A'. Learned Representative for management No.1 closed evidence on 19.07.2024 and closed documentary evidence on 30.07.2024.

10. I have heard the arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise findings are as below :-

Issues No. 1 & 2 :

11. Both these issues are taken up together being interconnected and in order to avoid repetition of discussion.

12. Onus to prove both these issues is on the workman.

13. Under these issues, workman Ravi Kumar examined himself as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto which are not produced here for the sake of brevity.

14. On the other hand, management No.1 examined MW1 Darshan Singh - Authorised Representative of IKYA Human Capital Solution (Division of Qness Corp. Ltd.), who vide his affidavit Exhibit 'MW1/A' deposed that the applicant (*here-in workman*) was engaged by the answering respondent (*here-in management No.1*) on a fixed term employment contract w.e.f. 07.11.2017 till 06.11.2018 vide offer letter dated 06.11.2017 as per the terms & conditions of his employment mentioned therein and was deputed at

the site of the respondent No. 2 (*here-in 'management No.2*). The claim filed by the claimant against the respondent No.1 alleging illegal termination of the services by the answering respondent is totally false and frivolous in as much as that the answering respondent had not terminated the services of the claimant at any point of time and it was the claimant himself who had abandoned on his own w.e.f. 09.03.2019 without any intimation and thereafter left the job of the answering respondent at his own volition and as such the present claim filed by the claimant against the answering respondent is liable to be dismissed. The claimant has not approached the Hon'ble Authority with clean hands and has concealed material facts from this Hon'ble Authority. The claimant has concealed that the claimant was engaged by the answering respondent on a fixed term employment contract w.e.f. 07.11.2017 till 06.11.2018 vide offer letter dated 06.11.2017. The claimant has also concealed from this Hon'ble Authority that the claimant being a habitual offender had turned up for work in a drunken state / under influence of alcohol on 09.03.2019 and when Sh. Kishor Kumar, Area Sales Manager of the client of the answering respondent i.e. respondent No. 2, who was his reporting manager confronted him and asked him to submit a written explanation for his misconduct and tender an apology in writing, the claimant for the reasons best known to him left to report for duty at his own and did not turn up for work. The claimant further concealed that he himself asked the answering respondent to process his full and final and when the answering respondent prepared his cheque for his full and final dues, he did not turn up to collect the same and raised a frivolous demand against the answering respondent which is totally false and baseless and untenable in the eyes of law. The claim filed by the claimant against the answering respondent alleging illegal termination of his services is liable to be rejected being false, frivolous and vexatious. He further deposed that several oral complaints were received by the management from the sub-ordinates / juniors of the applicant / workman regarding his unprofessional and unethical behavior but for want of written complaint, every time the applicant / workman was let go with an oral warning to mend his conduct. No legal dues whatsoever were in arrears and the applicant / workman used to receive the same regularly along with his salary. The management did not receive any demand notice from the applicant / workman and as such the question of replying to the same does not arise by any stretch of imagination. The management had already paid earned wages to applicant / workman. The management had appeared before the Labour Authorities and had apprised the Labour Authorities about the true and correct facts. The claim filed by the applicant / workman before the Conciliation Officer was duly replied by the management whereby the true and correct facts of the case were brought to the knowledge of the Conciliation Officer. The present claim filed by the claimant is false and frivolous.

15. From the oral as well documentary evidence led by the parties, it comes out that undisputedly the workman was engaged by management No.1 w.e.f. 07.11.2017 as Sales Representative and was deployed at the site of management No.2. The workman has alleged that he remained in continuous employment of management No.1 for the period w.e.f. 07.11.2017 to 20.03.2019 when he was verbally refused work by Shri Kishor Kumar - Area Sales Manager of management No.2 on the pretext that his services were no more required by the company. On the other hand, management No.1 has taken the plea that on 09.03.2019 the workman came to the office of management No.2 in a drunken state under the influence of alcohol, when Shri Kishor Kumar - Area Sales Manager of management No.2 confronted him and asked him to submit a written explanation and to tender written apology, then the workman left to report for duty at his own and did not turn up for work thereafter. Learned Representative for management No.1 argued that the workman of his own left the service due to his own misconduct w.e.f. 09.03.2019 though his services were never terminated. It is further argued by Learned Representative for management No.1 that the workman has abandoned the job. To my opinion, the plea taken by management No.1 that after dated 09.03.2019

workman did not report of duty stands falsified from the documents i.e. the copies of register of wages brought on record by MW1 in his cross-examination. MW1 in his remaining cross-examination recorded on 19.07.2024 stated that he has brought the copies of register of wages for the period November, 2017 and December, 2017, wage slip for the month of January, 2019; February, 2019 and March 2019. The aforesaid copies of documents produced by MW1 were placed on record. The perusal of pay slip for the month of March, 2019 would show that the workman was present in the said month for 17 days and this entry incorporated in full & final pay slip for the month of March, 2019 would support the plea of the workman that he was verbally refused work by Area Sales Manager of management No.2 on 20.03.2019. In the calendar month of March, 2019 from 1st March to 19th March by excluding 2 Sundays, the remaining workings days would come to 17 days. Thus, as per own record of management No.1 the workman performed duty for 17 days in the months of March, 2019 and as discussed above by including 2 days the last working day of the workman would be 19.03.2020 and the workman was refused verbally from work on 20.03.2020.

16. Since the workman remained in continuous employment of management No.1 from 07.11.2017 to 19.03.2020, thus the workman is proved to have completed continuous service of 240 days in 12 calendar months preceding termination. Thus, the workman has fulfilled the requirement of Section 25B of the ID Act. Once the workman is covered under Section 25B of the ID Act, then Section 25F of ID Act shall apply. For better appreciation Section 25F of the ID Act is reproduced as below :-

"25F. Conditions precedent to retrenchment of workmen. - No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;*
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and*
- (c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette]."*

17. MW1 (witness examined by management No.1) in para 4 of his affidavit Exhibit 'MW1/A' has set up a new story by alleging that several oral complaints were received by the management from the subordinates / juniors of the applicant / workman regarding his un-professional and un-ethical behaviour but for want of written complaint, every time the applicant / workman was let go with an oral warning to mend his conduct. The aforesaid story set up by MW1 in his examination-in-chief is beyond pleadings and thus not admissible into evidence. No such fact has been put by the management No.1 to workman / AW1 in his cross-examination. Rather AW1 in his cross-examination stated that there was no complaint of any misconduct against him prior to alleged termination dated 20.03.2019. Above all it is own suggestion of management No.1 that the services of the workman were terminated by Area Sales Manager of management No.2 on 20.03.2019. In this regard AW1 when put to cross-examination by management No.1 admitted the suggestion as correct

that on 20.03.2019 his services were terminated by the Area Sales Manager namely Shri Kishore Kumar of management No.2. Furthermore, MW1 when put to cross-examination stated that the management No.1 has not received any written complaint from management No.2 against the alleged misconduct of the workman.

18. If for the sake of arguments, it is assumed that the workman has abandoned the job, in that situation also the employer-management No.1 must issue notice to the workman calling his explanation or requiring him to rejoin duty but the same has not been done in this case. MW1 when put to cross-examination stated that the management did not issue any letter to the workman about his alleged abandonment.

19. The management No.1 in the written statement as well in evidence pleaded that the workman was engaged on a fixed term employment w.e.f 07.11.2017 to 06.11.2018 vide letter dated 06.11.2017 as per the terms & conditions of his employment mentioned therein. The aforesaid oral plea of management No.1 does not stand proved as no such appointment letter or fixed term employment contract is proved into evidence. It is also not the case of the management No.1 that the services of the workman came to an end on expiry of fixed terms employment on 06.11.2018.

20. In view of the discussion made above, since the workman fulfills the requirement of Section 25B of the ID Act, it was mandatory for the management No.1 - employer to comply with the statutory requirements under Section 25F of the ID Act which lays down the conditions that an employer must comply on the retrenchment of a workman. In the present case, MW1 when put to cross-examination stated that no charge sheet was issued or any inquiry was conducted against the workman. MW1 stated that at the time of alleged illegal termination, no notice was issued to the workman by the management No.1. The aforesaid version of MW1 would prove that the management has violated the statutory requirements under Section 25F of the ID Act while terminating the services of the workman. Consequently, the termination of the services of the workman in violation to Section 25F of the ID Act is illegal and the workman is entitled to reinstatement with continuity of service along with 50% back wages.

21. Accordingly, both these issues are decided in favour of the workman and against the management No.1 & 2.

Issues No. 3 & 4 :

22. Both these issues are taken up together being interconnected and in order to avoid repetition of discussion.

23. Onus to prove both these issues is on the management.

24. Under these issues Learned Representative for management No.1 argued that the workman has concealed the material facts that his job was on a fixed term employment contract, there were complaints from his subordinates and juniors regarding his un-professional and un-ethical behaviour and that he was a habitual offender and used to turn up for work in a drunken state under the influence of liquor. Besides, the workman has concealed the fact that he has asked to process his full & final and when the payment of full & final dues was prepared in the form of cheque, the workman did not turn up to collect the same and raised a frivolous demand against the management No.1. Therefore, the workman is not entitled to any kind of relief as claimed by him.

25. To my opinion, in the present case the management No.1 has failed to bring on record any cogent evidence to prove that the workman was guilty of any kind of misconduct. No written complaint from any of the subordinate or juniors to the workman is brought into evidence. The management's plea that on 09.03.2019 the workman came to the work place in a drunken state and thereafter did not turn up for duty also does not stand proved because as per the record of the pay slip of March, 2019 the workman was present on 17 working days during the said month. Therefore, the plea of management No.1 that the workman did not turn up after 09.03.2019 stands falsified. The management did not examine any witness in whose presence the workman came to the work place in a drunken state. Shri Kishor Kumar - Area Sales Manager, who allegedly confronted the workman of his misconduct is also not examined. Therefore, the management's plea that the workman came to the work place under the influence of liquor is not believe-able. Furthermore, there is nothing on record to show that the management No.1 ever issued any kind of information or ever communicated to the workman to collect his full & final dues. In the absence of same, the management's plea that the workman did not turn up to collect his full & final dues in the shape of cheques does not stand proved.

26. I do not find any defect so far maintainability of the present claim statement is concerned.

27. Accordingly, both these issues are decided against the management and in favour of the workman.

Relief :

28. In the view of foregoing finding on the issues above, the present industrial dispute is allowed. The workman is held entitled to reinstatement with continuity of service along with 50% back wages. The management is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which the management shall be liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this award till its actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.) . . . ,

Dated : 01.08.2024.

(JAGDEEP KAUR VIRK),
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT**Notification**

The 26th September, 2024

No. 13/2/152-HII(2)-2024/14986.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **4/2021** dated **09.08.2024** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

PRABHU NARAIN, H.NO.27, SMALL FLATS, MOULI JAGRAN PART - II, CHANDIGARH.
(Workman)

AND

M/S OXFORD ENGINEERS, PLOT NO.218, INDUSTRIAL AREA, PHASE - 1, CHANDIGARH
THROUGH ITS PARTNER/PROPRIETOR. (Management)

AWARD

1. Prabhu Narain, workman has presented industrial dispute under Section 2A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that the workman was appointed by the management as Clerk on 01.10.1997. The workman remained in the continuous & uninterrupted employment up to 23.02.2017 when his services were illegally & wrongly terminated. At the time of termination, the workman was drawing ₹10,000/- per month as wages. The workman was on 15 days authorised leave from 24.12.2016 to 12.01.2017 due to some urgent domestic work at his native village in U.P. The workman got his leave extended up to 23.02.2017 as the work for which he was on leave could not be completed. The workman got the leave sanctioned from the management over telephone. On 24.02.2017 as usual the workman went to attend his normal duties but he was informed that his services were no more required. The workman then filed a complaint dated 08.05.2017 with the Labour Inspector, U.T. Chandigarh but nobody appeared before the Labour Inspector on the date fixed for settlement. The workman then filed a case of gratuity before the Controlling Authority under the Payment of Gratuity Act, 1972, U.T. Chandigarh on 29.11.2017. The management submitted written statement before the Controlling Authority, U.T. Chandigarh in which the management alleged that the workman was not reporting for work and is a willful absentee. The workman then withdrew his claim application and reported for duty. The management refused him work without assigning any reason and notice. Since then the workman was daily reporting for duty but he was refused work on one pretext or the other. There was no complaint against the work & conduct of the workman from any of his colleagues and superiors. His work & conduct was appreciated by all. For his reinstatement, the workman served upon the management a demand notice dated 09.12.2019. The management neither denied the contents of the demand notice nor took the workman back on duty. The Assistant Labour Commissioner-cum-Conciliation Officer intervened but the dispute could not be settled within the stipulated period. The management did not appear before the Conciliation Officer on any date fixed for settlement. The action of the management is illegal, wrongful, motivated, against the principle of natural justice and unfair labour practice. The workman

remained un-employed during the period i.e. from the date of termination to till date. Prayer is made that the workman may be reinstated with full back wages along with continuity of service and full attendant benefits without any change in his service condition.

3. Notice issued to the management for dated 22.03.2021 through ordinary process was received back executed through Shri Rakesh Gupta. None appeared on behalf of the management as such the management was proceeded against ex-parte. The case was adjourned for ex-parte evidence on the workman. On 24.11.2021 Learned Representative for the workman placed on record affidavit of workman Prabhu Narain but did not examine the witness and the case was adjourned for recording testimony of AW Prabhu Narain. The workman availed repeated about 26 effective opportunities including repeated last opportunities as well as opportunity subject to cost, but failed to conclude evidence. Under the circumstances, evidence of workman was closed by order on dated 09.08.2024. The management is already proceeded against ex-parte.

4. I have heard the arguments of Learned Representative for the workman and perused the judicial file.

5. The workman has filed the present claim statement challenging the verbal order dated 24.02.2017 of termination of his services being illegal and seeking reinstatement with continuity of service along with full back wages and consequential benefits. The workman did not adduce any oral or documentary evidence to support the pleas taken by him in the claim statement. Therefore, the workman has failed to prove the averments of claim statement.

Relief :

6. In view of the reasons recorded above, the present industrial dispute reference is ex-parte declined. Appropriate Government be informed. File be consigned to the record room.

(Sd.) . . . ,

(JAGDEEP KAUR VIRK),
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

Dated : 09.08.2024.

Secretary Labour,
Chandigarh Administration.

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Notification

The 3rd October, 2024

No. 194 E.I./V.B (3E).—Sh. Om Prakash, Special Secretary (Readers' line) of Punjab and Haryana High Court at Chandigarh has retired from services of this Court w.e.f. 30.09.2024 (A.N.) on attaining the age of superannuation i.e. 58 years.

(Sd.) . . .,

(ASHISH KUMAR BANSAL),
Registrar (Administration),
for Registrar General.

CHANGE OF NAME

I, Suchita Nain, D/o Dalbir Singh, W/o Sandeep, # 804, Top floor B, GBS Society, Sector 48-A, Chandigarh, have changed my name to Suchita.

[1476-1]

I, Arti Devi, D/o Mange Ram, W/o Avtar Singh, H. No. 231, Phase-1, Babu Dham Colony, Chandigarh, have changed my name from Arti Devi to Simranjeet Kaur.

[1477-1]

I, Sushil Kumar, S/o Sh. Satbir Singh, H. No. 1195, 1st Floor, Sector 43-B, Chandigarh, have changed my minor daughter name from Ishita to Ishita Vasishtha.

[1478-1]

I, Naresh W/o Varinder Kumar # 351, Sector 21-A, Chandigarh, have changed my name to Naresh Sharma.

[1479-1]

I, Anjay Guglani, S/o Sh. Yashpal Guglani, R/o 2251, Sector 21-C, Chandigarh, Hereby Notify That Anjay Kumar And Anjay Guglani is one And The Same Person. Henceforth, I May Be Known As Anjay Guglani Only.

[1480-1]

I, Kailash Chand, S/o Anand Ram, R/o # 994, Phase-2, Ram Darbar, Chandigarh, have changed my name to Kailash.

[1481-1]

I, Sushil Kumar, S/o Sh. Satbir Singh, H. No. 1195, 1st Floor, Sector 43-B, Chandigarh, have changed my minor daughter name from Siya to Siya Vasishtha.

[1482-1]

I, Deepak Kumar Choudhary, S/o Kishori Choudhary, R/o # 36, Phase 2, Babu Dham Colony, Sector 26, Chandigarh, have changed my name from Deepak Kumar Choudhary to Deepak Choudhary.

[1483-1]

I, Gurbux Singh, S/o Swaran Singh, R/o House no 184, Sector 18-A, Chandigarh, have changed my name from Gurbux Singh to Gurbaksh Singh.

[1484-1]

I, Prikshit, S/o Chetan Kumar, R/o Village Dadu Majra, Chandigarh, I have changed my name from Prikshit to Prikshit Sharma.

[1485-1]

I, Sham Lal, S/o Sh. Raja Ram, R/o H. No. 3187, Sector 25-D, Chandigarh, have changed my name from Sham Lal to Shyam Lal.

[1486-1]

I, Naseem Akhtar, S/o Patwari Lal, R/o H. No. 1929, Sector 45, Burail, Chandigarh, have changed my name from Naseem Akhtar to Naseem Alam.

[1487-1]

I, Dilip Kumar Sharma, S/o Dhrup Sharma, R/o House No 3140, Ambedkar Awas Yojna, Palsora, Sector 56, Chandigarh, have changed My Minor Son Name From Rohan Kumar to Rohan Sharma.

[1488-1]

I, Sunny, S/o late Balbir Singh, # 2360, Dadu Majra Colony, Sector 38 west, Chandigarh, name changed my name to Sunny Kumar.

[1489-1]

I, Nirmla Rani, D/o Mani Ram, W/o Ashok Kumar, R/o # 1602, 1st Floor, Sector 22-B, Chandigarh, have changed my name to Nirmal Verma.

[1490-1]

I, Lucky, S/o Sh. Aytar Singh, R/o House No 1830, Near Khera Mandir Gali, Sector 45, Burail, Chandigarh, Have Changed My Name From Lucky to Lakhwinder Singh.

[1491-1]

I, Ritu, W/o Shri Sunil Kumar, R/o # 1580, Sector 23-B, Chandigarh, have changed my name from Ritu to Ritu Rani.

[1492-1]

I, Raghbir Singh, S/o Sh. Bhola Ram, R/o House No. 1555, Ramdarbar, Phase-2, Chandigarh, have changed my name from Raghbir Singh to Raghbir Kumar.

[1493-1]

I, Sunil Kumar Vatta *alias* Sunil Vatta S/o Om Parkash Vatta # F-1, CCET Staff Complex, Sector 26, Chandigarh, have changed my name to Sunil Kumar.

[1494-1]

I, Puja W/o Jaipal Kashyap R/o 759/14, Mohalla Thakur Dwara Manimajra, Chandigarh, have changed my name to Pooja Kashyap.

[1495-1]

I, Joginder Yadav S/o Nand Lal Yadav # 84, Kishangarh Chandigarh, have changed my name to Joginder Kumar Ram.

[1496-1]

I, Braham Dev Sharma S/o Late Sh. Shyam Sharma R/o H.no 3205, Sector 25-D Chandigarh, declare that in my aadhar card my father name mentioned as Shyam Sharma and in my pancard my father name wrongly mentioned as Shekhar Sharma, whereas my father correct name is Shyam Sharma.

[1497-1]

"No legal responsibility is accepted for the contents of publication of advertisements/public notices in this part of the Chandigarh Administration Gazette. Persons notifying the advertisements/public notices will remain solely responsible for the legal consequences and also for any other misrepresentation etc."